

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROSIE MARY GRAY,

Defendant-Appellant.

UNPUBLISHED

October 23, 2003

No. 241423

Oakland Circuit Court

LC No. 99-168354-FH

Before: Whitbeck, C.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant was convicted of forgery of a promissory note, MCL 750.251, false pretenses over \$1,000 but less than \$20,000, MCL 750.218(4), and forgery or alteration of a driver's license, MCL 257.310(7)(a). Defendant was sentenced to four to twenty years' imprisonment for the forgery conviction, four to fifteen years' imprisonment for the false pretenses conviction and one year imprisonment for the forgery or alteration of a driver's license conviction. Defendant appealed to this Court alleging the trial court considered improper factors in sentencing her. *People v Gray*, unpublished opinion per curium of the Court of Appeals, issued December 18, 2001 (Docket No. 227068). This Court upheld defendant's convictions, but remanded the matter for resentencing, based upon the trial court's improper consideration of defendant's exercise of her right to trial and refusal to admit guilt. *Id.* Defendant was resentenced to four to twenty years' imprisonment for the forgery conviction, four to fifteen years' imprisonment for the false pretenses conviction and one year imprisonment for the forgery or alteration of a driver's license conviction. Defendant again appeals as of right. We affirm.

Defendant's sole issue on appeal is that the trial court's determination of her sentence prior to allocution rendered her allocution meaningless. We disagree. Because defendant failed to preserve this issue for our review by failing to object to the trial court's statements regarding resentencing, our review is limited to a plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 139 (1999).

There must be strict compliance by a court with a defendant's right of allocution before imposition of sentence. *People v Parks*, 183 Mich App 647, 649; 455 NW2d 368 (1990). To demonstrate that the defendant's right to allocution was rendered meaningless, the defendant must show the court predetermined the defendant's sentences prior to allocution. *People v McNeal*, 150 Mich App 85, 90; 389 NW2d 708 (1985).

Defendant claims that the trial court's statement that it would impose the same sentence previously given to defendant, prior to allocution, evidenced a predetermination of sentence by the trial court. The statement made by the trial court, which defendant claims rendered her allocution meaningless, occurred at the scheduled resentencing on March 14, 2002. The trial court immediately clarified that the statement was an inquiry about the prior sentence and not regarding the resentencing. During the hearing when this statement occurred, defendant's counsel requested, and was given an opportunity for allocution. Allocution was interrupted by a substantial discussion which ensued between the trial court and counsel regarding issues pertaining to defendant's imprisonment for a parole violation and credit for time served. As a result, resentencing did not proceed on March 14, 2002, and was adjourned to March 21, 2002.

On March 21, 2002, defendant and her counsel were provided adequate opportunity for allocution before resentencing by the court. Imposition of the same sentences, at the resentencing, is not proof of predetermination. *People v Wells*, 238 Mich App 383, 392; 605 NW2d 374 (1999). The lower court record does not demonstrate that the trial court used improper factors when resentencing defendant. Defendant has not carried the burden of demonstrating plain error regarding the trial court's resentencing. We hold, therefore, that defendant's right to allocution was not denied or compromised, and no plain error exists in the trial court's resentencing of defendant.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Jane E. Markey